



# Commonwealth of Massachusetts State Ethics Commission

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## **PUBLIC ENFORCEMENT LETTER 96-2**

Dear Sheriff Nelson:

As you know, the State Ethics Commission ("Commission") has conducted a preliminary inquiry concerning whether you, as Bristol County Sheriff, violated the state conflict of interest law, G.L. c. 268A, when several Bristol County Sheriff Department ("Sheriff Department") employees raised funds for your political campaign committee by selling tickets to political fundraisers, sponsored by your campaign committee, to fellow Sheriff Department employees. Based on the staff's inquiry (discussed below), the Commission voted, on July 11, 1995, that there is reasonable cause to believe that you violated the state conflict of interest law, G.L. c. 268A, §23. The Commission, however, does not believe that further proceedings are warranted due to the fact that this is a case of first impression, and has, rather, determined that the public interest would be better served by bringing to your attention, and to the attention of all elected officials throughout the Commonwealth, the facts revealed by our inquiry and by setting forth the Commission's position concerning the application of the law to such facts, with the expectation that this advice will ensure your understanding of and future compliance with the conflict of interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

### **I. Facts**

1. You are the Sheriff of Bristol County, a paid elected position. You first became Bristol County Sheriff in 1983 and have since served continuously as Sheriff.
2. In 1991 and 1992, your political campaign committee held fundraising events. Tickets were sold to these events at a price of \$50 each.
3. In 1991 and 1992, several Sheriff Department correction officers of the rank of lieutenant and above solicited subordinate correction officers to purchase tickets to your campaign committee's political fundraisers. Some of these solicitations took place during Sheriff Department work hours and in Sheriff Department workplaces, including the Ashe Street Jail and the Dartmouth House of Correction. An undetermined number of tickets to your fundraisers were sold to rank and file correction officers by their superiors in this manner.
4. Some correction officers who purchased tickets to your campaign committee's fundraisers apparently felt pressured to do so. Thus, there is evidence that some senior ranking officers selling the fundraiser tickets encouraged their subordinates' sense of obligation to buy the tickets and fostered their belief that you took notice of who purchased tickets and who did not. The Commission is, however, aware of no evidence of any adverse consequences in fact suffered by anyone for refusing to buy tickets to your campaign committee's fundraisers.
5. In 1991 and 1992, persons selling tickets to your campaign committee's fundraisers were apparently advised about the applicable campaign finance laws. Some of these ticket sellers were senior ranking officers

under your direct command as Sheriff. Although you apparently did not personally participate in the sale of fundraiser tickets, due to the systematic and organized manner and the location of certain of the fundraiser ticket sales solicitations, you had reason to know that solicitations of Sheriff Department subordinates by their superiors were taking place in Sheriff Department workplaces.<sup>1/</sup>

## II. Discussion

As Bristol County Sheriff, you are a county employee. As such, you are subject to the conflict of interest law, G.L. c. 268A, generally, and in particular, for the purposes of this discussion, to § 23(b)(2) and 23(b)(3) of the statute.<sup>2/</sup>

There is evidence indicating that, in 1991 and 1992, many Bristol County correction officers were solicited to buy tickets to your campaign committee's political fundraising events. Some of these solicitations occurred on the job, in Sheriff Department workplaces, and were made by superior correction officers of their subordinates. These solicitations were to some degree inherently coercive of the employees solicited. Regardless of whether anything was said or implied by the ticket sellers about the consequences on the job of buying or not buying tickets, it is difficult in this context to view the purchase of tickets for one's boss' political fundraiser as a free choice.

Since the authorization of *Commission Advisory No. 4 (Political Activity)* in 1984, the Commission has made clear that solicitations of this kind are prohibited by G.L. c. 268A, §23(b)(2), when engaged in by *appointed* public employees. As the Commission stated in *Advisory No. 4*,

The Commission has repeatedly held that the conflict of interest law §23(b)(2) forbids public employees from soliciting anything of substantial value from those they oversee, because of the "inherently coercive" nature of such solicitations. The Commission has applied this principle to political campaigns. Thus, *appointed* public employees may not solicit campaign assistance from persons they regulate or who are under their supervision (emphasis in original). For example, they may not use their official title or authority, or their presence at a meeting under coercive circumstances, to solicit campaign assistance. ...The same principle applies to campaign fundraising. Thus, appointed public employees (whether compensated or not) may not solicit political contributions from other public employees whom they supervise, vendors that they oversee, or anyone over whom they may have regulatory power.

Thus, there is clearly reasonable cause to believe that the senior ranking correction officers, who are *appointed* employees, who solicited subordinates to buy your campaign committee's fundraiser tickets violated §23(b)(2).

Although you apparently did not directly participate in the sale of your campaign committee's fundraiser tickets, you had reason to know how the fundraiser tickets were being sold and to whom. Although Sheriff Department employees on your political committee were apparently cautioned about fundraising restrictions, that action did not deter or prevent some of your officers from soliciting their subordinates on the job. Your failure to take effective affirmative action to prevent these solicitations was in effect passive encouragement and approval of the solicitations.

The Commission has not previously had occasion to address the issue of whether and under what circumstances an *elected* official whose senior ranking subordinates solicit lower ranking employees for political assistance or contributions to the elected official's campaign committee violates §23(b)(2). Because the elected official has the authority to halt this type of prohibited solicitation, the elected official's failure to effectively do so and his acceptance of political contributions raised by the solicitation when he knows or has reason to know of the nature of the solicitation is, in effect, a use of his position to permit a prohibited activity. Sound public policy dictates that the elected official has an obligation to prevent such improper conduct once the official knows or has reason to know that his subordinates are engaging in such solicitations.

In a March 9, 1982 public letter to then Boston Mayor Kevin H. White (*Compliance Letter 82-2*), the Commission held that §23 prohibits a "public official who controls the jobs of large numbers of employees and the awarding of important contracts with vendors" from permitting "a [birthday party] to be planned that will raise money for him or any members of his family without making every reasonable effort to insure that there is neither direct solicitation of these employees or vendors nor pressure, either implicit or explicit, on such employees

or vendors to attend or contribute.”<sup>3/</sup> Similarly, it is an unwarranted privilege of substantial value and a violation of §23(b)(2) for an elected public official to allow appointed public employees in his agency to solicit subordinate agency employees to make political contributions (or otherwise provide assistance) to the elected public official’s campaign committee.

The 1991 and 1992 solicitations of Sheriff Department employees by their superiors to purchase tickets to your political fundraisers (and the monies thereby obtained) amounted to unwarranted privileges of substantial value. By not taking effective affirmative action to prevent these solicitations, you appear to have used your position as sheriff to obtain unwarranted privileges of substantial value not properly available to similarly situated persons.<sup>4/</sup> Accordingly, there is reasonable cause to believe that you violated §23(b)(2).

This same conduct and/or failure to act on your part also appears to have violated G.L.c. 268A, §23(b)(3)’s prohibition against a public official knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties. Your failure to effectively prevent the above-described actions of senior ranking correction officers directly under your command would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that you approved of the solicitation of Sheriff’s Department employees by their superiors to buy tickets to your political fundraisers and, given the sales methods apparently employed by some of your senior ranking officers (as described above in paragraph 4), that you could be unduly influenced in the performance of your official responsibilities as Sheriff by whether or not correction officers purchased tickets to your political fundraisers. Thus, there is reasonable cause to believe that you violated §23(b)(3).

### III. Disposition

Based upon its review of this matter, the Commission has determined that this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.<sup>5/</sup>

This matter is now closed.

DATE: December 21, 1995

<sup>1/</sup> Although on one occasion you apparently reprimanded a senior ranking correction officer for such solicitations, you did not inform your staff generally about the reprimand. You, instead, apparently informed your campaign committee of the reprimand and advised the committee to comply with all pertinent campaign laws. You, however, did not take any further action to ensure that your advice to your campaign committee was followed.

<sup>2/</sup> Section 23(b)(2) prohibits a public employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated persons. Section 23(b)(3) prohibits a public employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

<sup>3/</sup> Although, the Commission in *White* stated that its ruling did not relate to legitimate political fundraisers, as discussed above, the solicitation by appointed superiors of their subordinates is not legitimate political fundraising.

<sup>4/</sup> It is clear that the solicitations were of substantial value to you and your campaign fund. As the Commission noted in *EC-COI-92-5*, for the purposes of §23(b)(2), the raising of \$50 or more would constitute substantial value. See also *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8*.

<sup>5/</sup> The Commission is authorized to impose a fine of up to \$2,000 for each violation of G.L. c. 268A. The Commission chose to resolve this matter with a public enforcement letter because the Commission has not previously indicated that it will view elected officials as being responsible for ensuring that appointed superior officers or employees do not solicit subordinates for campaign contributions. In addition, it appears that you took some, albeit ineffective, action to control the above-described solicitations.